ALBERTA SECURITIES COMMISSION

DECISION

Citation: Capital Alternatives Inc., Re, 2007 ABASC 482 **Date: 20070710**

Capital Alternatives Inc., Milowe Brost, Strategic Metals Corp., Edna Forrest, Carol Weeks and Bradley Regier

Panel:	Stephen R. Murison Karl M. Ewoniak, CA Roderick J. McLeod, QC
Appearing:	Allison Neapole for Commission Staff
	John D. Blair for Capital Alternatives Inc. and Milowe Brost
	Glenn Solomon and Gavin Price for Strategic Metals Corp., Edna Forrest, Carol Weeks and Bradley Regier
Date of Hearing:	3 May 2007
Date of Decision:	10 July 2007

I. INTRODUCTION

[1] The following decision concludes a proceeding involving an illegal distribution of securities of Strategic Metals Corp. ("Strategic") from May 2004 to August 2005.

[2] The proceeding originated in a notice of hearing issued on 12 October 2005 by staff ("Staff") of the Alberta Securities Commission (the "Commission") against six respondents (the "Respondents"): Strategic, Edna Forrest ("Forrest"), Carol Weeks ("Weeks") and Bradley Regier ("Regier") (collectively, the "Strategic Respondents"), Capital Alternatives Inc. ("Alternatives") and Milowe Brost ("Brost"). For the reasons given below, we find it in the public interest to order sanctions against each of the Respondents in this matter.

[3] A hearing into the merits of Staff's allegations (the "Merits Hearing") was held in May and June 2006. In our 16 February 2007 decision on the merits of Staff's allegations (*Re Capital Alternatives Inc.*, 2007 ABASC 79, referred to herein as the "Merits Decision") we found that each of the Respondents had contravened the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"), specifically (as set out at para. 406):

- the Strategic Respondents and Brost were responsible for false or misleading statements (misrepresentations) in offering memoranda;
- the Strategic Respondents failed to file an offering memorandum and reports of distributions with the Commission as required;
- Forrest, Weeks and Regier made false certificates in offering memoranda;
- all of the Respondents traded in Strategic securities without the requisite registration and without a registration exemption;
- all of the Respondents distributed Strategic securities without a prospectus having been filed and receipted and without a prospectus exemption;
- Alternatives acted as an investment advisor without the requisite registration;
- Alternatives and Brost made false and misleading statements to Alberta investors to induce them to purchase Strategic securities;
- all of the Respondents engaged in a course of conduct that amounted to a fraud on the shareholders of Strategic; [and]
- Forrest and Regier made false or misleading statements under oath to Staff investigators[.]

[4] We further found that all of the Respondents acted contrary to the public interest.

[5] It remained to be determined whether it is in the public interest to order sanctions against any or all of the Respondents. The hearing into that issue (the "Sanction Hearing") was held on 3 May 2007. At the Sanction Hearing we heard from counsel for Staff and for each Respondent. We also had the benefit of written submissions from all parties.

[6] Our decision on the issue of sanction, and our reasons, follow. This decision should be read with the Merits Decision.

II. BACKGROUND

[7] The factual background to this proceeding was described in the Merits Decision and we will not repeat it here. It will suffice to review certain of the facts most pertinent to the findings in that decision.

[8] From May 2004 to August 2005 Strategic raised a total of almost $36.5 million – at least $24.6 million of that from Alberta investors – from the sale of two series of preferred shares ("Strategic Shares"). This involved "trades" and "distributions" of securities.

[9] Money went out the door as fast as it was raised in the Strategic distributions. There were several main beneficiaries of Strategic's largesse. Between November 2004 and August 2005 Strategic paid out over $19.3 million to an entity called True North Productions L.L.C. or to its designates. During the same period, Strategic also paid over $7.4 million to Aurora Financial Group and Steller Management Inc. in connection with a supposed mining concession project in Timor-Leste. Strategic also paid almost $6.5 million toward its purchase of Stone Mountain Resources Ltd. ("Stone Mountain") from Merendon Mining Corporation Ltd. ("Merendon"). Strategic paid Forrest a modest salary; Regier and Weeks were paid – also modestly – by Expedia Logistics Inc., which Regier owned and which received payments from Strategic, apparently for acting as an operations manager.

[10] Strategic entered into several contracts or letters of understanding. At least US$16 million of the money spent by Strategic was paid to fund one such arrangement, a joint venture in Ecuador between Strategic and Merendon de Ecuador S.A. de C.V., a wholly-owned subsidiary of Merendon. Common to these arrangements was a lack of clarity as to precisely what Strategic would receive for the money it was handing over – in the end, it appears that Strategic received very little by way of clear title or other security, certainly in respect of the Ecuador and Timor-Leste ventures. That contrasted with rather clearer commitments on the part of Strategic to provide yet further funding to the ventures (for example, up to US$34 million for the Timor-Leste venture).

[11] We divided the distributions of Strategic securities into four phases. For at least three of those phases (and possibly all of them) the distribution was made in purported reliance on registration and prospectus exemptions predicated on the delivery of an offering memorandum (the "OM Exemption").

[12] Three versions of a purported offering memorandum were used. We found in the Merits Decision that they were gravely deficient. The deficiencies included disclosure omissions and outright falsehoods. We concluded that the OM Exemption was not available for the distributions, which were therefore illegal.

[13] We concluded in the Merits Decision that Brost was at the centre of the activities of Strategic and Alternatives, and that when he developed Strategic and its business plan, he had in mind the involvement of Gary Sorenson ("Sorenson") and Art (Arthur) Wigmore ("Wigmore") and the funding of mining ventures of either or both of them (as indeed occurred in respect of ventures within the Merendon orbit). We concluded that the plan was to lure public investors (with promises of high returns and safety along with tantalizing references to gold) into putting money into securities of Strategic – essentially a shell of a company whose main (but undisclosed) function was to finance Sorenson's mining ventures. Forrest, Regier and Weeks – who brought no relevant business experience to the project and neither endeavoured to, nor were in any position to, conduct any real due diligence – were the public face of Strategic. Brost (and Sorenson and Wigmore), although originally intended to play a more formal role, instead stayed in the background.

[14] Staff successfully sought an order in August 2005 freezing money from the fourth of the distributions. That money – almost $1.4 million at the time – remains subject to the freeze order in the custody of a chartered bank.

[15] We remain convinced that Strategic investors will not see the returns they expected to realize on their investment, and indeed we are doubtful that they will recover much (or any, apart from the frozen funds) of the money they paid.

III. SANCTIONS

A. Position of Staff

[16] Staff sought significant sanctions against each of the Respondents with the partial exception of Strategic:

- against Alternatives, permanent bans on trading and use of exemptions and a $150 000 administrative penalty;
- against Brost, permanent bans on trading, use of exemptions and acting as a director or officer of any issuer, and a $1 million administrative penalty;
- in respect of Strategic, a ban on all trading in its securities and a ban on the company's use of exemptions, both to continue until it files and obtains a receipt for a prospectus;
- against each of Forrest and Regier, 15-year bans on trading and use of exemptions, permanent director-and-officer bans, and administrative penalties of $250 000; and
- against Weeks, 15-year trading, exemptions and director-and-officer bans and a $100 000 administrative penalty.

[17] Staff also sought almost $170 000 in costs against all Respondents, jointly and severally.

B. Position of the Strategic Respondents

[18] The Strategic Respondents acknowledged that, in light of our findings in the Merits Decision, sanctions against each of them would be appropriate. They submitted, however, that: this proceeding involved the first finding of wrongdoing in the capital markets against Forrest, Regier and Weeks; the flaws in the offering memoranda amount to "a case of inadequate disclosure as opposed to no disclosure at all"; and none of those three individuals "directly benefited from the funds raised through investors". They characterized the three's reliance on a securities lawyer as a mitigating factor.

[19] The Strategic Respondents concurred with Staff's position on the appropriate sanctions against Strategic itself. They submitted that the appropriate sanctions against each of Forrest and Regier would be trading, exemptions and director-and-officer bans of not more than five years and an administrative penalty of not more than $30 000. For Weeks, they suggested that the appropriate sanctions would be trading, exemptions and director-and-officer bans of not more than two years and an administrative penalty of not more than $15 000. The bans should not, they contended, preclude them from trading securities for their own account through accounts in their names or the names of their respective spouses or children.

[20] The Strategic Respondents also suggested that, upon the release of this decision, the Commission's jurisdiction to freeze funds "will end", and they indicated that "Strategic will return the funds . . . to the subscribers who paid those funds, pro-rata".

C. Position of Alternatives and Brost

[21] Alternatives and Brost, in their joint submission, acknowledged our finding that Brost "had set wheels in motion that led to a fraud on investors" but submitted that: Brost had not been found to have benefited personally from the activities in question; two of the mining ventures were serious or taken seriously; there was no proof that investors' money was lost; the offering memoranda were prepared with the assistance of a lawyer; "most if not all of the impugned activities . . . occurred well after the point in time where there is any evidence whatsoever about [Brost]"; and the evidence against Brost, apart from an investigative interview in the United States (the "Brost Interview"), was insufficient to support the allegations against him. In sum, Brost submitted that this was not a case of the most egregious misconduct, and that "Maximum sanctions . . . should be reserved for those cases where the evidence is incontrovertible and has resulted in more definite conclusions about a respondent's intent, actions and circumstances". Moreover, on the issue of what the maximum sanction might be, Brost noted that in August 2004 (the date of the Brost Interview), "the Act provided for a maximum $100,000 administrative penalty for individuals" and the current $1 million maximum was proclaimed in force only on 8 June 2005, "well after any activities [Brost] was found to have carried out". Brost submitted that the "presumption against retrospective operation of statutes" applied so that the maximum administrative penalty available to us in respect of his conduct in this case was $100 000, not $1 million.

[22] Brost's counsel noted the existence of authority to the contrary, including the decision of the Supreme Court of Canada in *Brosseau v. Alberta Securities Commission* (1989), 57 D.L.R. (4th) 458. He also attempted to distinguish the Commission's retrospective application of an administrative penalty in *Re Morrison Williams Investment Management Ltd.* (2000), 7 A.S.C.S. 2888, arguing that the administrative penalty there was more justifiable as protective because none of the available non-monetary sanctions were appropriate in the circumstances of that case. In Brost's submission, those cases turned on the relevant sanctions being other than punitive, whereas Brost asserted that it is "self-evident that an administrative penalty is penal". As such, Brost's position was that the presumption against retroactive application is applicable to an administrative penalty notwithstanding *Morrison Williams* and *Brosseau*. He submitted that an appropriate administrative penalty would be $50 000 to $75 000.

[23] Brost took issue with Staff's request for bans on him serving as a director or officer of "any issuer". Brost contended that a director-and-officer ban against him ought to apply only in respect of reporting issuers (public companies). He was particularly concerned that he not be prohibited from continuing to act as a director and officer of The Institute for Financial Learning Group of Companies Inc. ("IFFL"). He submitted that bans on his serving in those capacities with IFFL "would be punitive and unwarranted" on the grounds that IFFL "is a private company that does not solicit investment funds or distribute securities" and that such bans "could have the effect of affecting or impairing IFFL without any hearing, evidence or basis".

[24] Brost also disputed the appropriateness of a trading ban, and contended that it would not be contrary to the public interest to allow him to acquire or dispose of securities for his own account or the account of family members, as distinct from solicitations or distributions to the public.

[25] Counsel for Brost and Alternatives characterized Staff's proposed $150 000 administrative penalty against Alternatives as "excessive [,] punitive and redundant", arguing that $25 000 would be more appropriate, were Alternatives still in business. However, he stated that it was no longer in business, so there was "no punitive or protective purpose" in imposing an administrative penalty. Nor would the proposed bans against Alternatives serve "any preventative or protective purpose".

D. The Law

1. General Principles

[26] Apart from differing views as to what maximum administrative penalty might be available in this case, the parties appeared to share a common understanding as to the law on sanction in a securities enforcement proceeding such as this. As has often been stated, sanctioning orders of the types sought by Staff in this case under sections 198 and 199 of the Act are to be prospective and protective. Their purpose is not to punish respondents

but rather to protect investors and to foster the efficiency of our capital market and confidence in the integrity of that market (see, among others, *Re Hampton Court Resources Inc.*, 2006 ABASC 1841 at para. 9). A crucial consideration is deterrence, both specific – deterring a recurrence of misconduct by a particular respondent – and general – deterring future misconduct by others who might be minded to act similarly (see, for example, *Hampton* at para. 9). This Commission in *Re Lamoureux*, [2001] A.S.C.D. No. 613 at para. 11 (appeal dismissed – *Lamoureux v. Alberta (Securities Commission)*, 2002 ABCA 253) enumerated a non-exclusive list of factors that may be appropriate in considering whether, or what, sanctions are in the public interest in a particular case. Those factors include:

- a respondent's capital market background and experience;
- a respondent's recognition of the seriousness of the improper activity;
- the harm suffered by investors, and the harm to the integrity of the capital market generally, as a result of improper activity;
- the benefits received by a respondent as a result of improper activity;
- the risk to investors and the capital market generally of continued capital market participation by the respondent;
- the need for specific and general deterrence; and
- previous decisions based on similar circumstances.

[27] We accept the Respondents' contention that a respondent's reliance on the advice or actions of a lawyer might in some circumstances be a relevant factor.

2. Bans

[28] Certain sanctions remove a respondent from participation in the capital market. These are trading bans (orders under section 198(1)(b) of the Act that a respondent cease trading in or purchasing securities and exchange contracts or, under section 198(1)(c), that any or all of the exemptions available under Alberta securities laws do not apply to that respondent) and director-and-officer bans (orders under sections 198(1)(d) and (e) of the Act that a respondent resign any position that he or she holds as a director or officer of an issuer, and that the respondent is prohibited from becoming or acting as a director or officer (or both) of any issuer).

3. Administrative Penalties

(a) General

[29] An administrative penalty – an order under section 199 of the Act that a respondent pay a specified amount to the Commission – serves a rather different purpose. Stated simply, an administrative penalty sends the message, to the particular respondent and to other market participants, that future conduct similar to that being sanctioned is not tolerated and will come at a direct financial cost. Trading and director-and-officer bans combine aspects of direct protection of investors and the capital market with

specific and general deterrence. An administrative penalty is more directly a measure of specific and general deterrence, although designed also to achieve investor and capital market protection.

[30] Securities enforcement proceedings typically involve allegations of financial or economic misconduct or, at least, conduct motivated by economic or financial considerations. Market participants are therefore known to be at least partially motivated by money. A monetary sanction will thus often serve as an obvious, direct and effective measure of specific and general deterrence.

[31] As noted, our task in assessing whether or what sanctions are in the public interest in a particular case is not to punish. Moreover, the lawmakers have seen fit to include administrative penalties among the armoury available to securities regulators in the exercise of their protective function. Therefore, it is clear that the "administrative penalty" nomenclature does not make it punitive.

(b) Retrospectivity

[32] Because administrative penalties are not punitive, the principles enunciated in *Brosseau* are applicable to administrative penalties as well as to other sanctions under sections 198 and 199, as set out in *Morrison Williams*. That is, the presumption against retrospective application does not bar the imposition of an administrative penalty greater than the maximum $100 000 that was in place until 8 June 2005.

[33] It is not, in any event, clear to us that we need consider retrospectivity. The Strategic distributions continued after 8 June 2005 when the new, higher maximum administrative penalty took effect. Alternatives and the Strategic Respondents continued in their roles after that date. In respect of Brost, it is true that the Brost Interview, which took place in August 2004, was the compelling piece of evidence that proved Brost's misconduct and, indeed, the centrality of his role in what transpired. However, the date of the Brost Interview itself was not indicative of the timing of his misconduct; nor, as noted, did the scheme that he instigated end with the Brost Interview or before the administrative penalty maximum was increased. That continued misconduct followed the scheme devised earlier by Brost. Had Staff not intervened with the freeze order when they did, we believe that the misconduct likely would have continued even longer. It follows that applying the Act as it read after 8 June 2005 to the facts of this case is not a retrospective application.

[34] We conclude that the sanctions available to us in this case include an administrative penalty of up to $1 million.

(c) Extent or Quantum Considerations

[35] Given the protective and deterrent purposes of sanctions under sections 198 and 199 of the Act, the extent or quantum of sanctions ordered in any particular case is to be

assessed with a view to their anticipated effect on future conduct. Thus, the misconduct being sanctioned need not be the worst ever seen (or imagined) before the maximum sanction is considered and ordered. Rather, the maximum available sanction may properly be found to be in the public interest where the decision-maker concludes that a lesser sanction would provide inadequate protection and deterrence of a recurrence of the sort of misconduct found in the particular case.

E. Analysis of Sanctioning Factors

1. Brost

[36] The following sanctioning factors generally argue in favour of significant sanction against Brost.

(a) Capital Market Experience and Activity

[37] Brost, although not currently a registrant under the Act, had been registered under the Act as a salesperson for a time between 1994 and 1996. Moreover, he has been involved in raising money in the capital market; he has served as a corporate officer and director; he established Alternatives to market securities to public investors; and he held and continues to hold himself out as someone knowledgeable about capital markets and investing.

[38] Brost, in short, has experience in the capital market and he has been an active participant in that market. We consider that this factor supports significant sanctions.

(b) Recognition of Seriousness of Activity

[39] Nothing in Brost's submissions nor in the evidence of his behaviour indicated to us any recognition on his part of the seriousness of his misconduct. His submissions on sanction appeared to focus on the nature of the evidence that was ultimately determinative of the merits of the allegations against him. There was no acknowledgement of concern for the position in which investors have been placed as a result of the fraudulent scheme he designed.

[40] Submissions made by Brost's counsel on his behalf on a peripheral matter – whether any director-and-officer ban should or should not affect his continuing role with IFFL – suggested to us a disappointing absence of recognition of the seriousness of Brost's misconduct. The submissions suggested that he is willing to put this matter behind him so long as he is able to carry on with a business that apparently involves him educating paying members of the public about investing. Brost's apparent belief that the public ought to continue looking to and paying him – an initiator of a large and successful fraudulent scheme – for guidance on investing took the panel aback.

[41] We conclude that Brost not only does not recognize the seriousness of his misconduct, but also is prepared shamelessly to overlook it. This, we consider, indicates a need for significant sanction.

(c) Harm to Investors and Future Risk

[42] We do not know for certain whether Strategic investors will recover all or any of their investments. We do know that they were misled and harmed and they remain exposed to further harm.

[43] Moreover, the deceptive scheme devised by Brost exposes the capital market as a whole to harm. The success of the capital market, from the perspective both of those who invest their money in it and those who raise capital, depends on the fair and efficient operation of the market – its integrity – and confidence in that integrity. A scheme such as this, in which a large amount of money was raised under false pretences, is inherently unfair. Because investors made decisions based on misleading information, their decisions were inefficient in the economic sense. The lack of integrity with which Brost and the other Respondents operated may be perceived as an attack on the integrity of the market as a whole. Because the Strategic distributions took place in the "exempt" market, the integrity of that portion of the capital market was put at particular risk. This jeopardizes both investors' willingness to put their money into that market and the resulting ability of responsible issuers to raise capital there.

[44] In short, Brost's scheme harmed Strategic investors in particular and a key sector of our capital market in general.

[45] We must send a clear message that this sort of scheme is not, and will not be, tolerated.

(d) Benefits Received

[46] The evidence as to what Brost received by way of financial reward for this scheme was slight. We know that Alternatives, the company he founded, was entitled to 5% of the money raised from investors. On this basis, Alternatives seems to have earned over $1.2 million from Alberta investors alone (over $1.8 million in total) before the Strategic distributions were shut down by regulatory action. Brost was the sole shareholder of Alternatives and said (although this did not appear in Alberta Corporate Registry records) that he was its chief executive officer, president and a director. Alberta Corporate Registry records were amended retroactively in October 2004 to substitute another individual for Brost as shareholder. We do not know the circumstances of that substitution, including what Brost was paid for his holding in Alternatives and to what extent such payments took into account that company's earnings, or entitlement to earnings, from selling Strategic securities.

[47] The manner in which Strategic disbursed the money it raised from investors was, as noted in the Merits Decision, somewhat complicated and obscure. It is possible that Brost benefited financially from some of these payments. The evidence was insufficient for us to reach a definitive conclusion on that point.

[48] What is clear, however, is that in devising this scheme, Brost put himself in a position to be able to benefit financially, to a significant degree, from the money raised in the Strategic distributions. This factor, on balance, argues for sanction against Brost.

(e) Previous Decisions

[49] As has been noted before, previous decisions on sanction are seldom a helpful guide as to what, if any, sanction is appropriate in a particular case because the facts and circumstances of each case tend to be unique. We do, however, emphasize that we consider this case – contrary to Brost's suggestion – to be one of the most egregious we have seen. We found Brost to have been at the centre not only of contraventions of important provisions of the Act and conduct contrary to the public interest, but also of conduct amounting to a fraud on investors. As the British Columbia Securities Commission noted in *Eron Mortgage Corporation*, [2000] 7 B.C.S.C.W.S. 22, significant sanctions are essential in cases of fraud to provide the necessary specific and general deterrents to further fraudulent conduct.

(f) Reliance on Legal Advice

[50] Persuasive evidence of a respondent's reliance, in good faith, on clear advice from lawyers who held themselves out as experts in the field of securities laws may indeed be relevant to an assessment of the degree of the respondent's misconduct or to an assessment of what, if any, sanction is appropriate.

[51] In this case, though, there is no such persuasive evidence in respect of any of the Respondents. We know that a lawyer was involved in the changes to Alberta Corporate Registry records relating to Strategic, the preparation of some or all of the Strategic offering memoranda and dealings with Commission Staff who had expressed concerns about the disclosure in those documents.

[52] However, we do not know: what advice he gave to any of the Respondents; what advice he was asked for; who retained him; or the terms of the retainer. More crucially, the misconduct in this case did not centre on esoteric or highly technical aspects of securities laws. At heart, this was a deception. All of the Respondents were involved in presenting misleading information to prospective public investors. We find it difficult to conceive a set of facts in which respondents could reasonably blame their own deceptive behaviour – here, conduct amounting to a fraud on investors – on their lawyers.

2. Alternatives

[53] The role and conduct of Alternatives in the Strategic distributions were significant. As selling agent for those distributions it was to earn a 5% commission. As noted, based on the amount raised in the distributions, Alternatives earned over $1.2 million in commissions from sales to Alberta investors alone. The amount would presumably have been even higher had the Strategic distributions not been halted. Alternatives operated in

accordance with the plan conceived by Brost, even after Alberta Corporate Registry records were amended to remove his formal connection with the company. Alternatives was also instrumental in marketing Strategic securities. Blatant misrepresentations appeared on its website.

[54] Brost and Alternatives made joint submissions on sanction.

[55] Accordingly, our comments above on sanctions and sanctioning factors as they relate to Brost apply also to Alternatives. We reach the same conclusion. The sanctioning factors generally argue in favour of significant sanction against Alternatives. We consider that this outweighs Alternatives' suggested current state of business inactivity.

3. The Strategic Respondents

[56] The Strategic Respondents made joint submissions on sanction. Accordingly, we assess the factors relevant to sanction in large measure for all of the Strategic Respondents together. However, we also note important differences in their respective circumstances.

(a) Capital Market Experience and Activity

[57] None of the Strategic Respondents has ever been registered under the Act and Strategic has never been a reporting issuer under the Act, nor ever received a prospectus receipt. None of the Strategic Respondents appeared to have had any significant experience in the capital market.

[58] This factor, were it to be assessed in isolation, would generally tend toward modest sanctions, or none at all, against the Strategic Respondents.

[59] However, as noted elsewhere, the misconduct of the Strategic Respondents was not merely technical. This was, above all, a case of fraud and deceit. We do not accept that experience or training in the operation and laws governing the capital market are necessary to teach the difference between dealing honestly and fairly with investors or deceiving them. Given the nature of the misconduct in this case, we consider the Strategic Respondents' lack of capital market experience to be a factor of minor importance.

(b) Recognition of Seriousness

[60] We discern no recognition by any of the Strategic Respondents of the seriousness of their misconduct. To the contrary, their own submissions on sanction referred to this as "a case of inadequate disclosure as opposed to no disclosure at all". This profoundly misinterprets our findings in the Merits Decision.

[61] The fundamental problem was not (as the quoted phrase implies) that the various versions of the Strategic offering memoranda omitted a few mandatory line items of disclosure. Rather, the offering memoranda, as well as other information conveyed to prospective Strategic investors, conveyed a thoroughly misleading picture of what investors were buying into and what was happening with their money. The disclosure was not only "inadequate"; it was misleading, deceitful and fraudulent.

[62] As noted above, this was one of the most egregious cases we have encountered. The Strategic Respondents' failure to recognize this argues in favour of significant sanction against each of them.

(c) Harm to Investors and Future Risk

[63] We commented above on the harm and risk of future harm done by Brost. Given that all of the Strategic Respondents were actively engaged in operating the scheme devised principally by Brost, the comments on the harm done and risk of future harm apply equally to the Strategic Respondents. For the same reasons, we conclude that this factor argues in favour of significant sanction against each of the Strategic Respondents.

(d) Benefits Received by Respondents

[64] The evidence showed only modest financial benefit to Forrest, Regier and Weeks from their involvement with Strategic. However, Regier and Forrest, at least, were certainly in a position to steer Strategic money to themselves. The evidence showed that Regier was involved in a Colorado company that received funds from Strategic, and it was he who directly disbursed much of the money raised by Strategic.

[65] Forrest and Regier, in particular, and Weeks to a lesser extent, also took on significant direct responsibilities as officers of Strategic and as signatories of important documents including the offering memoranda. The conduct of each was important to the success of the scheme. We find it difficult to imagine that they participated as they did without an expectation of, or hope for, some ultimate recompense beyond their modest salaries. However, Weeks' involvement did appear to be in a somewhat subordinate role, and the evidence did not disclose the same degree of planning and obfuscation as it did for the other individual Strategic Respondents. It seems possible that Weeks did not expect significant financial benefit for her misconduct. Given their obscure contractual arrangements and their behaviour during the course of the investigation, we are unable to give a similar benefit of the doubt to Forrest and Regier.

[66] As to Strategic itself, it obviously benefited directly in the sense that it was the recipient of some $36.5 million of investor funds, but it then promptly handed over that money (but for the portion frozen by Staff order) in exchange for minimal or non-existent contractual entitlements. Strategic, viewed separately from the other Respondents, was a vehicle and something of a pawn in this operation.

[67] On balance, we consider that the extent of financial benefits received by Strategic itself and by Weeks was a neutral factor in respect of sanction. However, the financial benefits accessible to Forrest and Regier argue in favour of strong sanctions against them.

(e) Previous Decisions

[68] Our comments above in connection with the relevance or helpfulness of previous decisions to the question of appropriate sanction for Brost apply equally to the Strategic Respondents. Again, following the reasoning in *Eron*, we believe that the nature of the misconduct in this case argues strongly for significant sanction against each of the Strategic Respondents.

(f) Reliance on Legal Advice

[69] Our comments above in respect of Brost and his claimed reliance on legal advice apply also to the Strategic Respondents. There was no persuasive evidence that they acted as they did in misguided reliance on legal advice. Given the fraudulent and deceitful nature of their misconduct, we do not consider the involvement of a lawyer in this scheme to be a mitigating factor for the Strategic Respondents.

(g) Conduct during Investigation

[70] We found that both Forrest and Regier made false or misleading statements under oath to Staff during the course of the investigation. Thus, these two individuals not only played key roles in the deceptive scheme, but also continued their dissembling, deceptive behaviour after the formal launch of an investigation. These are, simply, deceitful individuals. This argues strongly for significant sanction against both of them.

[71] We note that, although Weeks was also alleged to have made misrepresentations to Staff under oath, we did not sustain that allegation. As such, although her involvement in the distributions and other factors noted above lead us to conclude that significant sanction is also warranted against Weeks, this particular factor indicates that this is so but to a lesser degree than against Forrest and Regier.

(h) Concerns Unique to Strategic

[72] As to Strategic itself, the sanctioning factors canvassed above were either neutral or argued in favour of significant sanction. There is, however, a very important additional factor. Strategic is owned by its shareholders – the investors who are the direct victims of the fraudulent scheme. Given Strategic's dismal disclosure (notably, its offering memoranda) and doubtful and apparently unfavourable contractual arrangements, we believe that the protection of other potential investors and the Alberta capital market demands that there be no further trading in securities of Strategic at this time. Investors simply do not have an adequate information base on which to make informed investment decisions. That informational deficiency might be addressed, as Staff implicitly suggested, by the clearance of a prospectus providing full, true and plain

disclosure. Failing that, we believe that this is a case for a complete trading ban in Strategic securities.

[73] However, other types of sanction, such as a monetary payment, which might be justified by Strategic's role in the fraudulent scheme, could further aggravate the harm already suffered by Strategic's investors. Ultimately, they will bear the economic burden of the company's financial obligations. For that reason, we believe that the interests of the Strategic investors argue strongly against a direct monetary sanction against that company.

F. Appropriate Sanctions

1. General

[74] In our view, the appropriate sanctions in this case must take into account both the nature and the scope of the fraudulent scheme. Our analysis of factors relevant to sanction led us to conclude that it is in the public interest to order significant sanctions against all of the Respondents, tailored to the misconduct and the circumstances of each.

[75] This is a case, above all, of deceit. Each of the Respondents participated in disseminating falsehoods – and failing to provide important facts – to investors. For these reasons, we conclude that the appropriate sanction against each Respondent must include both significant bans on access to the capital market (including bans on trading and the use of exemptions and, in the case of individuals, director-and-officer bans) and (except for Strategic, as noted elsewhere) significant, meaningful administrative penalties.

2. Strategic Respondents

[76] In addition to their respective roles in furthering the deceitful scheme, we note that each of the individual Strategic Respondents could have chosen to stand back from the scheme and, more usefully, to take some positive step to prevent more money being taken from investors under false pretences, bring the matter to the attention of the Commission or cooperate in sorting the matter out. None of them ever did so. That, too, in our view calls for meaningful sanction against each.

[77] Among the individual Strategic Respondents, we consider the responsibility, and the necessary degree of protective measures, to be equal in the case of Forrest and Regier. We consider Weeks' role to have been less than theirs and we therefore believe that the overall sanction of her misconduct would appropriately be less than theirs.

[78] We conclude that the protection of investors and the Alberta capital market demands that each of Forrest, Regier and Weeks be removed from access to our capital market for lengthy periods and that each of them pay a significant administrative penalty. The sanctions proposed by the individual Strategic Respondents are, in our view, risible

in the circumstances. We believe that more extensive sanctions are necessary to provide meaningful protection and deterrence.

[79] We consider that the package of sanctions proposed by Staff against the individual respondents better reflects the gravity of the misconduct, the purposes of sanctions, and the public interest. Given the deceitful conduct of Forrest and Regier, we do not believe that lapse of time alone is likely to make them suitable directors or officers. We therefore believe it to be in the public interest that they be barred from acting in such capacities permanently. However, focusing particularly on the need for protection of investors, we consider that the other market-access bans proposed by Staff in respect of each individual Strategic Respondent would provide insufficient protection and deterrence. Somewhat longer bans are, in our view, appropriate. That said, we do not consider that carve-outs from such bans to permit personal trading of securities, through a registrant, for the account of registered retirement savings plans ("RRSPs") or registered education savings plans ("RESPs") for themselves or their respective spouses or dependent children, would pose a threat to the public interest. We also consider that, when combined with longer market-access bans, administrative penalties somewhat lower than Staff sought would provide adequate and appropriate protection and deterrence.

[80] Perhaps a new board of directors and new management at Strategic, with business ability and a greater concern for the interests of Strategic's shareholders, might be motivated to mitigate some of the harm done by the Respondents by endeavouring to renegotiate more even-handed arrangements with the Merendon companies and other beneficiaries of Strategic's past largesse. However, for the reasons given above, we conclude that a complete ban on trading of Strategic securities and its use of exemptions under securities laws is appropriate at this time. We do not consider that a monetary sanction against that company would be in the public interest.

[81] Accordingly, we make the following orders:

(a) Strategic

[82] Under sections 198(1)(a) and (c) of the Act, all trading in securities of Strategic must cease and none of the exemptions contained in Alberta securities laws apply to Strategic until such time, if any, as Strategic has filed a prospectus with the Commission and the Executive Director of the Commission has issued a receipt therefor.

(b) Forrest

[83] Under sections 198(1)(b) and (c) of the Act, Forrest must cease trading in securities and exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to Forrest, for a period of 20 years from the date of this decision, except that this shall not preclude her from trading securities or exchange contracts through a registrant, for an account maintained with that registrant for the

benefit of an RRSP or RESP of which one or more of herself, her spouse or her dependent children is beneficiary.

[84] Under sections 198(1)(d) and (e) of the Act, Forrest must resign all positions she holds as a director or officer of any issuer, and she is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently.

[85] Under section 199 of the Act, Forrest must pay an administrative penalty in the amount of $200 000.

(c) Regier

[86] Under sections 198(1)(b) and (c) of the Act, Regier must cease trading in securities and exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to Regier, for a period of 20 years from the date of this decision, except that this shall not preclude him from trading securities or exchange contracts through a registrant, for an account maintained with that registrant for the benefit of an RRSP or RESP of which one or more of himself, his spouse or his dependent children is beneficiary.

[87] Under sections 198(1)(d) and (e) of the Act, Regier must resign all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently.

[88] Under section 199 of the Act, Regier must pay an administrative penalty in the amount of $200 000.

(d) Weeks

[89] Under sections 198(1)(b) and (c) of the Act, Weeks must cease trading in securities and exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to Weeks, for a period of 15 years from the date of this decision, except that this shall not preclude her from trading securities or exchange contracts through a registrant, for an account maintained with that registrant for the benefit of an RRSP or RESP of which one or more of herself, her spouse or her dependent children is beneficiary.

[90] Under sections 198(1)(d) and (e) of the Act, Weeks must resign all positions she holds as a director or officer of any issuer, and she is prohibited from becoming or acting as a director or officer (or both) of any issuer for a period of 15 years from the date of this decision.

[91] Under section 199 of the Act, Weeks must pay an administrative penalty in the amount of $65 000.

3. Alternatives

[92] We disagree with Alternatives' position that sanctions are unwarranted because it is inactive.

[93] Alternatives was the selling agent and marketer for the Strategic distributions. Prospective investors dealt directly with Alternatives. The evidence indicates that it earned over $1.2 million from Alberta investors alone. Alternatives' role in this fraudulent scheme was a large one designed to provide it with significant financial benefit. We conclude that Alternatives' misconduct warrants significant sanction, both in terms of market-access bans and a monetary levy.

[94] In the circumstances, we consider it entirely appropriate that Alternatives be removed permanently from access to investors and the capital market. We conclude, however, that the requisite degree of deterrence demands that this company also face a direct monetary sanction not less than that ordered against each of Forrest and Regier.

[95] Accordingly, we order under sections 198(1)(b) and (c) of the Act that Alternatives must cease trading in securities and exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to Alternatives, permanently. We further order under section 199 of the Act that Alternatives must pay an administrative penalty in the amount of $200 000.

4. Brost

[96] We were not persuaded by Brost's contentions that his role in this fraudulent scheme was limited (in scope or in time) or that the lack of evidence against him apart from the Brost Interview ought somehow to diminish the need for sanction or the extent of that sanction. We reiterate our finding that Brost was at the centre of this fraudulent scheme and that what transpired – including the resulting and potential harm – followed from his design. We conclude that Brost warrants the most significant sanction of any of the individual Respondents. We consider that Alberta investors and the Alberta capital market are at risk if there is any prospect of Brost regaining access to the capital market. We also believe that any prospect of his reentering the market would diminish unacceptably the deterrent message that must be sent to others who might be intrigued by the success of this scheme.

[97] Moreover, we conclude that general and specific deterrence demand a large, direct financial payment by Brost. Given that over $24 million was raised from Alberta investors in this deceitful scheme – and over $36 million was raised in total – before it was brought to an end by regulatory action, we are certain that an administrative penalty of $100 000 (the maximum contemplated under the Act before June 2005) would not send a sufficiently firm message. An administrative penalty of $50 000 to $75 000 as suggested by Brost would, in our view, be derisory – an insufficient deterrent to a recurrence of such misconduct by him or by others.

[98] Lawmakers deliberately amended Alberta securities laws to raise the maximum administrative penalty to $1 million – the amount sought against Brost in this case. Orders of that magnitude are permissible and a real possibility. However, this Commission has not previously made an order of that magnitude – nor, indeed, in amounts approaching $1 million – against any respondent. The British Columbia Securities Commission has made administrative penalty orders of up to $250 000 against individual respondents. Those orders have apparently not had the desired deterrent effect, as market misconduct continues to occur. It is therefore reasonable to conclude that adequate deterrence may require even larger monetary sanctions. However, it seems to us premature to conclude that the public interest requires a move immediately to the new maximum administrative penalty as sought by Staff in this case.

[99] We believe that a firm yet incremental approach, is appropriate. We consider that an administrative penalty of $650 000, while significantly less than the maximum available, will (when coupled with market-access bans) provide a sufficient measure of specific deterrence against Brost and of general deterrence for other market participants. If it does not, this Commission will be prepared to impose higher administrative penalties in appropriate circumstances in the future.

[100] We were not persuaded by Brost's submission that any director-and-officer bans against him ought not to extend to non-reporting issuers, in particular IFFL. There are instances in which this Commission has been persuaded that it is reasonable to exclude from the scope of a director-and-officer ban a particular named issuer or issuers, where we are persuaded that allowing an otherwise-banned respondent to continue in a leading role with those issuers would not put the interests of investors, or the integrity or reputation of the capital market, in jeopardy. We therefore considered the evidence and submissions as to why we ought to reach such a conclusion in respect of Brost's involvement with IFFL. We did not view Brost's current leading role with IFFL as crucial, because it would be open to the company to seek new leadership. Moreover, the ill-defined description of IFFL's business suggested that it provides investment, tax and investment-product information to investors, and that Brost's continued involvement as an IFFL director and officer is somehow essential to that business. Given the essential nature of his misconduct in this case, these are not areas that we believe Brost ought to be involved in and remunerated for. Most importantly, however, the two corporate Respondents in this proceeding – both heavily involved in illegal distributions and a fraudulent scheme – were non-reporting issuers.

[101] We have concluded that the public interest calls for Brost's permanent removal from access to the capital market. In the circumstances of this case, we believe that this includes access as a director or officer of any issuer, reporting or non-reporting.

[102] We do not accept Brost's contention that any trading bans should constrain him only in soliciting or distributing to the public, and that he should otherwise retain the unrestricted privilege of trading in securities of private companies or reporting issuers. However, we do not consider that carve-outs from such bans to permit limited personal trading by Brost, as we conceded to the individual Strategic Respondents, would pose a threat to the public interest.

[103] Accordingly, we order as follows:

- under sections 198(1)(b) and (c) of the Act, Brost must cease trading in securities and exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to Brost, permanently, except that this shall not preclude him from trading securities or exchange contracts through a registrant, for an account maintained with that registrant for the benefit of an RRSP or RESP of which one or more of himself, his spouse or his dependent children is beneficiary;

- under sections 198(1)(d) and (e) of the Act, Brost must resign all positions he holds as a director or officer of any issuer and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently; and

- under section 199 of the Act, Brost must pay an administrative penalty in the amount of $650 000.

IV. FREEZE ORDER

[104] As noted, the Strategic Respondents suggested that the current freeze on certain funds subscribed by investors to Strategic will come to an end automatically upon issuance of this decision. We do not think that contention accurate. However, we agree with the Strategic Respondents that the frozen funds ought now to be returned to investors.

[105] In our view, the appropriate course of action is for Strategic to apply to the Court for an order or direction. Should that not occur, we urge Staff to consider the matter and act accordingly.

V. COSTS

A. Position of Staff

[106] Staff tendered with their submissions a statement of "Investigation & Hearing Costs" (we will refer to it as the "Costs Statement") showing a total amount of $169 225.11, broken down into the categories of "Investigative Services", "Court Reporter Costs - Investigations", "Court Reporter Costs - Hearing", "Legal Services", "Disbursements / Incidental Costs" and "Witness Expenses". This Costs

Statement replaced an earlier version with a slightly higher total of over $172 000, the difference being accounted for within the category of "Investigative Services".

[107] Staff sought an order under section 202 of the Act that the Respondents, jointly and severally, pay the full amount of these costs.

B. Position of the Strategic Respondents

[108] The Strategic Respondents took exception to the quantum of costs in the Costs Statement. Of particular concern to the Strategic Respondents were the largest portions, "Investigative Services" and "Legal Services". They called into question the appropriateness of ordering the Respondents to pay costs for an investigation that went beyond them and their conduct and that was, they contended, largely irrelevant to them (in support of which contention they pointed to the redaction, on grounds of irrelevancy, of large portions of investigation notes that Staff disclosed to them). In respect of "Legal Services", the Strategic Respondents questioned both the sufficiency of the information conveyed and the basis on which the hourly rates assigned to identified Staff counsel had been reached. The Strategic Respondents submitted that it would be appropriate to order that each of them pay costs of $5000.

C. Position of Alternatives and Brost

[109] Alternatives and Brost also challenged Staff's request for costs. They agreed with the position of the Strategic Respondents on that topic. We infer from that that Alternatives and Brost considered an order that each of them pay costs of $5000 would be appropriate. They also suggested that the most compelling evidence against Brost came not from Staff's investigation as a whole, but rather from the Brost Interview (part of an investigation by another regulator), so that "every hour on [the Costs Statement] would have been incurred even if [Brost] was not being investigated".

D. Law and Analysis

1. General

[110] Section 202 of the Act empowers the Commission to order costs in an enforcement hearing. That provision states that we can order that costs be paid in accordance with the regulations. Those regulations – specifically, sections 191.1 and 191.2 of the *Alberta Securities Commission Rules (General)* (the "Rules") – set limits on the types and quanta of costs orders that we can make.

[111] As a preliminary point, costs are distinct from sanctions. An order for costs is nothing more than a mechanism for recovery of certain costs that have been expended in an enforcement investigation or hearing. Decisions to order costs turn not on a reapplication of the sanctioning factors discussed above, but rather on whether or to what extent the respondent contributed to the investigation and to the efficient resolution, one way or the other, of the allegations. This is not to say that respondents ought not to

mount a defence if they wish; doing so is not, by itself, properly viewed as impeding the efficient resolution of a matter.

[112] The Commission has not, traditionally, ordered full recovery of costs. However, it has the power to do so, within the limits set by the Rules.

[113] We think it appropriate to recognize that the Commission, as a self-funding regulatory body, derives its financial resources from market participants. Costs incurred by Staff in investigations and enforcement hearings may therefore be considered to be borne, at least indirectly, by market participants. In general, we believe that it is appropriate that a respondent, who has been found to have contravened the Act or acted contrary to the public interest, pay at least some of the costs of the investigation and hearing. That is not an invariable rule, and even where we make such an order the quantum of the order will vary from case to case. The extent to which a respondent's conduct in an investigation or hearing has tended to facilitate (or impede) the resolution of issues and moderate (or exacerbate) the cost of doing so can be highly pertinent to the determination of appropriate costs orders. Indeed, we believe that a respondent's contribution (or otherwise) to the effectiveness of an investigation and the resolution of allegations will generally be the principal determinant of costs orders.

[114] In this case, we conclude that it is appropriate for each Respondent except Strategic to pay costs of the investigation and hearing. We make an exception for Strategic based not on its conduct, but – as set out earlier – because a costs order would ultimately be borne by Strategic's investors.

2. Recoverable Costs

[115] We see no reason why costs of each type contemplated in the Rules should not be recovered.

[116] We turn now to the quantum of costs and the sufficiency of the information provided by Staff. The Costs Statement provides at least as much detail as is often seen in, for example, an account rendered by a lawyer to a client. The Costs Statement was tendered by counsel for Staff, who provided further information in the Sanction Hearing. That counsel, as a practising lawyer, is an officer of the court who bears the responsibilities of her profession. In our view, it is reasonable to give considerable weight to her specific representations as to the costs incurred.

[117] We consider that the categories of "Court Reporter Costs - Investigations", "Court Reporter Costs - Hearing", "Disbursements/Incidental Costs" and "Witness Expenses", are sufficiently and reliably explained. We accept the corresponding amounts of costs as set out in the Costs Statement. These costs totalled $20 895.11. It was not suggested, and we have no reason to believe, that these amounts were excessive or unreasonable.

(a) Investigation Costs

[118] In respect of the costs of the investigation, we noted the Respondents' position that information about the investigation, its scope and costs was insufficient. Staff counsel explained at the Sanction Hearing that she had reviewed background data and reduced certain of the time and cost entries under the heading "Investigative Services" to remove from an earlier version of the Costs Statement amounts that did not "specifically relate to the investigation of the matter that eventually led to" the hearing. We are prepared to accept her assurance on that point, as well as the names of the investigators and the time attributed to each for this investigation, all as presented in the Costs Statement.

[119] The scope of Staff's investigation is clear from the complexities in the evidence and the Merits Decision. Not all of those whose names turned up in the investigation became respondents. Nor were all of the allegations proved. But very significant allegations relating to the complicated and involved web uncovered in the investigation were ultimately proved against each Respondent.

[120] An investigation is by its nature a process of exploration, with the outcome unknown at the outset. Some leads may produce results, others not. Some information derived or produced in the course of an investigation may ultimately not be relevant to the specific allegations and particulars against certain respondents in a hearing. But that does not in our view mean that section 202 of the Act requires us, with hindsight, to dissect an investigation to identify and isolate only the specific investigative activity and results (and the costs thereof) ultimately used in relation to the hearing.

[121] We are satisfied that there is a sufficient connection between the investigation (and associated costs) and the allegations against all of the Respondents that the amounts disclosed in the Costs Statement are an appropriate subject for consideration for an order under section 202 of the Act.

[122] As to the potential quantum of such costs that can properly be the subject of such an order, section 191.1(a) of the Rules specifies a limit of $50 per hour "for each staff member engaged in the investigation". Staff counsel contended that it was fair to apply this hourly rate in the Costs Statement. There was no evidence that doing so was unfair.

(b) Legal Costs of Hearing

[123] On the issue of costs of legal services, the basis on which legal costs can be charged differs depending upon whether the legal services were rendered for the investigation (section 191.1(f) of the Rules) or for the hearing (section 191.2(k) of the Rules). Investigation-related legal costs are capped at $300 per hour per lawyer. Hearing-related services are to be "reasonable" but capped at $2000 per day.

[124] The description given under the heading "Legal Services" in the Costs Statement suggests to us that all of the legal work referred to therein related to the hearing and

preparation therefor, as distinct from purely investigative work. This is consistent with what Staff counsel submitted during the hearing, even though some of the work undoubtedly began long before the start of the hearing. For reasons already given, we are prepared to accept the identification of the lawyers and the hours specified for each as they are set out in the Costs Statement. We also accept that (assuming that the hourly rates ascribed to each lawyer are appropriate), the manner in which the $2000 per day cap was addressed is appropriate and, indeed, reflects a conservative reading of the Rules. As to the hourly rates ascribed to each lawyer in the Costs Statements, nothing in these circumstances persuades us that they are other than reasonable.

(c) Conclusion on Recoverable Costs

[125] We therefore conclude that all of the costs set out in the Costs Statement could be the subject of an order under section 202 of the Act.

3. Appropriate Proportion of Costs to be Recovered

[126] We turn now to the issue of the proportion of the potentially recoverable costs that ought to be the subject of orders against the Respondents. We considered the conduct of the Respondents in relation to the investigation and hearing and the ultimate resolution of the matters before us.

[127] We do not believe that the conduct of the Respondents in presenting a defence made the hearing inefficient. They were represented by counsel who, in our observation, acted with competence, courtesy and professionalism. However, we believe that the Respondents did contribute to inefficiency because there was no reasonable basis for contesting much of this evidence. Putting Staff to the burden of proving it, and the panel to the burden of considering and making findings on it, involved cost and delay that could easily have been averted by the Respondents admitting at least some of what, in the end, turned out to be clear facts.

[128] In respect of the investigation, much of the complexity, duration and cost involved can be attributed directly to the deceptive scheme in which all of the Respondents participated. Moreover, the evidence did not indicate that any of the Respondents made a constructive contribution to simplifying or speeding the investigation. Forrest and Regier acted deceitfully while they were under investigation; we found that they gave false evidence under oath to Staff investigators.

[129] For these reasons, we consider that the circumstances of this case are such that it is appropriate that the Respondents (other than Strategic, for reasons already explained) pay a large portion of the costs of the investigation and the hearing, within the limits prescribed by the Rules. We conclude that they should bear all of the $57 537.50 cost of the investigation (identified in the Costs Statement as "Investigative Services" and "Court Reporter Costs - Investigation") and two-thirds ($74 458.41) of the $111 687.61 cost of the Hearing ("Court Reporter Costs - Hearing", "Legal Services",

"Disbursements/Incidental Costs" and "Witness Expenses") – an aggregate of $131 995.91.

4. Joint and Several Responsibility for Costs

[130] Staff submitted that all of the Respondents should be liable jointly and severally to pay costs. Section 202 of the Act does not preclude such an order. We believe that such an order could be appropriate in certain circumstances – particularly where respondents each bear a similar share of responsibility for costs having been incurred, including a lack of cooperation or other conduct contrary to the efficient resolution of an investigation and hearing. Here the conduct of some of the Respondents as it affected the investigation was sufficiently similar that those Respondents should share joint responsibility for costs. However, we are not persuaded that this applies to all of the Respondents, because there were also important differences in how some of them conducted themselves during the investigation. For example, we found that Forrest and Regier made misrepresentations under oath to Staff. We made no similar finding against other Respondents. Brost, whom we found to have been a guiding mind behind the scheme, veiled his involvement as part of that scheme and thereby undoubtedly made the investigation more involved and complex than would otherwise have been the case.

[131] We are persuaded that Forrest and Regier should bear joint and several liability for their respective shares of costs. We reach a similar conclusion in respect of Brost and Alternatives and their respective shares of costs. We are not persuaded that Weeks should be responsible for any of the others' shares of costs. For reasons already stated, we do not consider it appropriate for Strategic to be made responsible for any of the costs.

[132] We conclude that it is appropriate that responsibility for costs be allocated among the Respondents (other than Strategic) as follows: Alternatives and Brost – 25% each, with joint and several responsibility for their aggregate 50% share; Forrest and Regier – 20% each, with joint and several responsibility for their aggregate 40% share; and Weeks – 10%.

VI. CONCLUSIONS SUMMARIZED

[133] To summarize the above conclusions, we found that significant sanctions against each Respondent are in the public interest. However, special considerations apply to Strategic.

[134] We also concluded that the Respondents (other than Strategic) should pay the costs of the investigation and two-thirds of the cost of the hearing, within the limits specified in the Rules.

[135] Accordingly, we have ordered as follows:

- All trading in Strategic securities must cease and Strategic is denied the use of all exemptions under the Act until such time, if any, as Strategic has filed a prospectus with the Commission and the Executive Director of the Commission has issued a receipt therefor;

- Forrest is permanently prohibited from acting as a director or officer of any issuer; banned from trading in securities and exchange contracts and denied the use of all exemptions under Alberta securities laws for 20 years (with exceptions for certain RRSPs or RESPs); and must pay an administrative penalty of $200 000;

- Regier is permanently prohibited from acting as a director or officer of any issuer; banned from trading in securities and exchange contracts and denied the use of all exemptions under Alberta securities laws for 20 years (with exceptions for certain RRSPs or RESPs); and must pay an administrative penalty of $200 000;

- Weeks is prohibited from acting as a director or officer of any issuer, banned from trading in securities and exchange contracts and denied the use of all exemptions under Alberta securities laws (with exceptions for certain RRSPs or RESPs), all for 15 years; and must pay an administrative penalty of $65 000;

- Alternatives is permanently banned from trading in securities and exchange contracts and using exemptions under Alberta securities laws; and must pay an administrative penalty of $200 000; and

- Brost is permanently prohibited from acting as a director or officer of any issuer, banned from trading in securities and exchange contracts and denied the use of all exemptions under Alberta securities laws (with exceptions for certain RRSPs or RESPs); and must pay an administrative penalty of $650 000.

[136] We have also ordered that costs of the investigation and hearing be paid as follows:

- Forrest – $26 399.18;
- Regier – $26 399.18;
- Brost – $32 998.98;
- Alternatives – $32 998.98; and
- Weeks – $13 199.59.

[137] Forrest and Regier are jointly and severally liable for each other's share of such costs. Brost and Alternatives are jointly and severally liable for each other's share of such costs.

[138] We make no formal order concerning the Freeze Order, which remains in place. We urge Strategic to obtain an order or direction from the Court, failing which we urge Staff to consider the matter and act accordingly.

[139] Given our finding in the Merits Decision that this scheme amounted to a fraud on investors, we urge Staff, if they have not already done so, to consider referring this case to the authorities responsible for administering criminal laws.

[140] This proceeding is concluded.

10 July 2007

For the Commission:

"original signed by"
Stephen R. Murison

"original signed by"
Karl M. Ewoniak, CA

"original signed by"
Roderick J. McLeod, QC